

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BARBARA K. HALL,	:	
Plaintiff	:	
	:	
	:	CIVIL ACTION
v.	:	NO. 02-6918
	:	
JO ANNE BARNHART, Commissioner	:	
of Social Security,	:	
Defendant	:	

MEMORANDUM OPINION

RUFE, J.

March 8, 2006

Plaintiff seeks judicial review of the Commissioner of the Social Security Administration's denial of her claim for Social Security Disability Insurance Benefits ("DIB") under Title II of the Social Security Act.¹ The parties filed cross-motions for summary judgment. United States Magistrate Judge Peter B. Scuderi reviewed these motions and the administrative record and issued a report ("R & R") recommending that this Court deny Plaintiff's Motion for Summary Judgment, grant Defendant's Motion for Summary Judgment, and affirm the Commissioner's decision. Upon careful, independent review of the motions, the administrative record, the R & R, and Plaintiff's objections thereto, the Court overrules Plaintiff's objections and grants Defendant's Motion for Summary Judgment.

I. PROCEDURAL HISTORY

Plaintiff filed an application for DIB on September 25, 1997, with a protective filing date of July 16, 1990, alleging disability since October 16, 1987 due to fibromyalgia and interstitial

¹ 42 U.S.C. §§ 401-33.

cystitis. Plaintiff's date last insured was December 31, 1993, so she must demonstrate the onset of her disability before that date. Plaintiff's application was denied initially and on reconsideration. Plaintiff timely filed a hearing request, and an Administrative Law Judge ("ALJ") held a hearing on October 14, 1998. At that hearing, Plaintiff raised the issue of a mental impairment for the first time, and so the ALJ remanded the case to the Pennsylvania Bureau of Disability Determination ("PBDD") on October 19, 1998 for consideration of this claim. On November 24, 1998, the PBDD again found Plaintiff was not disabled, and Plaintiff requested a second ALJ hearing. After a hearing on April 2, 1999, an ALJ again denied Plaintiff's request for benefits on April 28, 1999. Plaintiff appealed.

On June 27, 2002, the Appeals Council denied Plaintiff's request for review. Plaintiff appealed this decision to this Court. However, the record was incomplete due to the failure of a cassette tape to record the ALJ hearing, and so the Court remanded the case for a rehearing, at the Commissioner's request. The ALJ held a third hearing on October 22, 2003, and issued a denial of benefits on December 15, 2003. The Appeals Council denied Plaintiff's request for review. Therefore, the ALJ decision dated December 15, 2003 is the final decision of the Commissioner. Plaintiff filed a timely Complaint with this Court seeking review of this final decision.

II. FACTUAL BACKGROUND

Born on June 23, 1953, Plaintiff was forty-three years old when she first filed for disability insurance benefits. Plaintiff earned a bachelor's degree from Temple University, and began teaching kindergarten in the Philadelphia Public School District in 1975.² On October 16,

² R. 238.

1987, Plaintiff fell off a desk while attempting to open a window in her classroom.³ Following the accident, Plaintiff saw her family doctor for back pain. Her doctor recommended bed rest and referred Plaintiff to an orthopedic specialist. The specialist evaluated Plaintiff and prescribed bed rest and anti-inflammatory medication. Thereafter, Plaintiff spent approximately five weeks in bed and eventually was referred for physical therapy. Around this time, Plaintiff underwent magnetic resonance imaging and computer tomography imaging, which indicated minimal bulging of the L4/5 vertebrae and L5/S1 disc.⁴

On April 8, 1988, Plaintiff began treatment with Leonard Kamen, D.O. (“Dr. Kamen”). Dr. Kamen observed that Plaintiff exhibited “poor flexibility in pelvic rotation,” but noted further that Plaintiff was able to cook for her family (although she said she was unable to perform other chores), that Plaintiff could walk without presenting visible abnormalities, and that Plaintiff experienced mild discomfort when asked to perform certain exercises. Based on his initial examination, Dr. Kamen recommended aquatic exercises in a heated pool followed by land-based exercises to improve her back’s strength, mobility, and endurance.⁵

On April 27, 1988, Plaintiff saw Dr. Kamen for a follow-up examination. During the examination, Plaintiff reported that aquatic therapy provided some relief for the discomfort in her back. Plaintiff also reported that the anti-inflammatory medication she had been taking was effective but caused gastro-intestinal side effects and tinnitus. During the follow-up, Dr. Kamen observed that Plaintiff demonstrated good flexibility but continued to suffer from tenderness in some

³ R. 94.

⁴ R. 470.

⁵ R. 471.

of her joints. Based on the follow-up examination, Dr. Kamen concluded that Plaintiff should not return to work for three months, allowing time for her back to improve its strength and endurance.⁶

Plaintiff saw Dr. Kamen again on June 20, 1988. Dr. Kamen reported that Plaintiff demonstrated “steady progress in her strength and flexibility” as a result of the aquatic exercises and land-based therapy. Dr. Kamen also reported continued tenderness in Plaintiff’s lower back, but noted that Plaintiff experienced no discomfort with pelvic shifting or when raising her legs while supine. Despite her improvement, Plaintiff expressed trepidation about returning to work due to the pain in her back. However, Dr. Kamen assured Plaintiff that her pain would abate as she continued to improve the strength and flexibility in her back.⁷

On November 18, 1988, Dr. Kamen noted that Plaintiff presented with “considerable pain and . . . considerable stress due to uncertain work conditions.”⁸ He further noted that Plaintiff’s working diagnoses at that time were: (1) “fibromyalgia, fibrositis syndrome”; (2) “possible . . . joint arthritis”; and (3) “possible bulging or partially herniated lumbar discs.”⁹ Plaintiff continued to undergo follow-up treatments and physical therapy for the next few years, and Dr. Kamen reported on June 21, 1990 that Plaintiff had “reached a rather stable level of her fibromyalgia syndrome.”¹⁰

On December 17, 1990, Kristene Whitmore, M.D. (“Dr. Whitmore”) diagnosed Plaintiff with interstitial cystitis after a urinary tract examination. Thereafter, on September 20,

⁶ R. 469.

⁷ R. 466.

⁸ R. 452.

⁹ R. 452.

¹⁰ R. 435.

1991, Dr. Kamen opined after a routine follow-up examination that there was “a relationship between [Plaintiff’s] fibromyalgia and [her] interstitial cystitis with one exacerbating the other.”¹¹ And on March 31, 1992, Dr. Kamen noted that Plaintiff had been managing her muscular and bladder problems well until she was involved in a motor vehicle accident on March 19, 1992. As a result of the automobile accident, Plaintiff complained to Dr. Kamen that she experienced pain in her neck and upper extremities. Based on this follow-up examination, Dr. Kamen diagnosed Plaintiff with cervical myoligamentous strain, in addition to the fibromyalgia and interstitial cystitis.¹² Around the same time, Plaintiff saw Marc Kress, M.D. (“Dr. Kress”), who noted that Plaintiff suffered from muscle spasms and other muscular/skeletal discomfort after the automobile accident.

Thereafter, on April 13, 1992, Richard Goldberg, D.O. (“Dr. Goldberg”) examined Plaintiff, and diagnosed her, in addition to fibromyalgia and interstitial cystitis, as suffering from “acute cervical strain and sprain” as a result of the automobile accident.¹³ She was treated for this acute injury with medication and physical therapy. Over the next year, Plaintiff’s medical condition stabilized, but she still suffered from fibromyalgia, interstitial cystitis, and pelvic strain.¹⁴

At a follow-up examination with Dr. Kamen on March 25, 1993, he prescribed anti-anxiety medication for Plaintiff’s somatic symptoms and sleep problems, but noted at the next follow-up examination—two months later on May 25, 1993—that Plaintiff had yet to start using the

¹¹ R. 430.

¹² R. 427.

¹³ R. 343.

¹⁴ R. 415.

medication.¹⁵ Additionally, Dr. Kamen noted after the May 1993 examination that Plaintiff could attend to her children in the home, but also noted that Plaintiff sometimes found “herself forgetful and depressed.”¹⁶ Also at the May 1993 examination, Dr. Kamen told Plaintiff that her numerous medical issues warranted adaptive counseling.¹⁷ There is no evidence that Plaintiff ever sought counseling. Dr. Kamen also asked Plaintiff to undergo testing to investigate her cognitive abilities, as Plaintiff complained of memory loss, but Plaintiff did not undergo any formal cognitive evaluations.¹⁸

On September 25, 1997, Plaintiff reported fibromyalgia and interstitial cystitis as her disabling conditions on her application for DIB.¹⁹ As a result of these conditions, Plaintiff stated on the application that she suffered extreme pain in her muscles, elbows, knees, and neck, and experienced chronic fatigue, sleep disturbance, visual perception problems, irritable bowel syndrome,²⁰ urinary leakage, memory loss, and difficulty following directions.²¹

III. STANDARD OF REVIEW

Under the Social Security Act, a claimant is disabled if he or she is unable to engage in “any substantial gainful activity by reason of any medically determinable physical or mental

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ See R. 398.

¹⁹ R. 234.

²⁰ There is no medical documentation of this diagnosis.

²¹ Id.

impairment which can be expected to . . . last for a continuous period of not less than twelve months.”²² Under the regulations, a five-step sequential evaluation is to be utilized to evaluate disability claims.²³ In this case, the ALJ applied the five-step sequential evaluation to the disability claim, and reached the fifth step of the analysis. Therefore, the critical question for the Court is whether the ALJ correctly found that Plaintiff had the residual functional capacity to perform some job that exists in the national economy²⁴ during the relevant time period.²⁵

The Social Security Act provides for judicial review of any “final decision of the Commissioner of Social Security” in a disability proceeding.²⁶ However, that review is “limited to determining whether the Commissioner applied the correct legal standards and whether the record, as a whole, contains substantial evidence to support the Commissioner’s findings of fact.”²⁷ The Commissioner’s findings “as to any fact, if supported by substantial evidence, shall be conclusive. Substantial evidence has been defined as “more than a mere scintilla” but somewhat less than a

²² 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. §404.1505(a).

²³ The five steps are as follows: 1) the claimant must establish that he is not currently engaging in substantial gainful activity; 2) the claimant must establish that he suffers from a severe impairment; 3) if the claimant demonstrates that his disability meets or equals an impairment listed in 20 CFR Pt. 404, Subpt. P, App. 1, he is considered *per se* disabled and entitled to DIB, and the evaluation process ends there; 4) if the claimant does not satisfy step three, then he must establish that he does not have sufficient residual functional capacity to perform his past relevant work; and 5) if he does so, the burden shifts to the Commissioner to show that the claimant has the residual functional capacity to perform other work which exists in substantial numbers in the national economy. Burns v. Barnhart, 312 F.3d 113, 119 (3d Cir. 2002); 20 C.F.R. § 404.1520(b)-(f).

²⁴ Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979).

²⁵ Although Plaintiff’s claim for benefits is ongoing, and continuing benefits would require a continued showing of disability to date, she is not entitled to benefits unless she can show that her disability began before her date last insured.

²⁶ 42 U.S.C. § 405(g). The Court may enter a judgment “affirming, modifying or reversing the decision of the Commissioner of Social Security, with or without remanding the case for a rehearing.” Id.

²⁷ Schwartz v. Halter, 134 F. Supp. 2d 640, 647 (E.D. Pa. 2001).

preponderance of the evidence, or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁸ The standard is “deferential and includes deference to inferences drawn from the facts if they, in turn, are supported by substantial evidence.”²⁹ Even if the record could support a contrary conclusion, the decision of the ALJ will not be overruled as long as there is substantial evidence to support it.³⁰

In reviewing the Magistrate Judge’s R & R, the Court must review *de novo* only those portions of the R & R to which Plaintiff objected.³¹ In this case, the Plaintiff’s objections cover the same five substantive issues raised in her Motion for Summary Judgment.

IV. DISCUSSION

A. The Development of the Administrative Record

Plaintiff argues that the ALJ violated her duty to develop the record by failing to order a psychological or psychiatric consultative examination. The decision to order a consultative examination is made after the Commissioner gives full consideration to whether any additional medical information is needed to make a proper decision about a claim.³² Before purchasing a consultative examination, the ALJ considers the existing medical records, the applicant’s own disability interview form, and any reports based on record reviews by medical professionals for the

²⁸ Richardson v. Perales, 402 U.S. 389, 401 (1971); Jesurum v. Sec’y of the United States Dep’t of Health & Human Servs., 48 F.3d 114, 117 (3d Cir. 1995).

²⁹ Schaudeck v. Comm’r of S.S.A., 181 F.3d 429, 431 (3d Cir. 1999).

³⁰ Simmonds v. Heckler, 807 F.2d 54, 58 (3d Cir. 1986).

³¹ 28 U.S.C. § 636(b)(1).

³² 20 C.F.R. §416.919a.

PBPP.³³ A consultative examination may be ordered if existing records are insufficient to support a decision, key medical records are unavailable for review, or existing records pose a conflict which additional testing may resolve.³⁴

Plaintiff raised the issue of a mental impairment at her October 14, 1998 hearing, and the ALJ remanded the case to the PBDD to consider this issue. The ALJ specifically required completion of the Psychiatric Review Technique Form (“PRTF”), which was carried out by a PBDD psychologist (who reviewed the evidence of record regarding Plaintiff’s mental condition prior to her date last insured). The reviewing psychologist found “no evidence of a formally diagnosed significant mental impairment” and found that her ability to work was not hindered by any significant mental impairment before her date last insured. Upon consideration of the completed PRTF, the PBDD again denied the application. On appeal from the PBDD denial, the ALJ did not order a consultative examination, nor has any ALJ since. As Magistrate Judge Scuderi found, this Court is not convinced that a consultative examination in late 1998 or thereafter would have been helpful in determining whether a mental impairment existed prior to the date last insured (December 31, 1993).³⁵

The ALJ’s determinations on mental health without the benefit of a consultative examination are fully supported by the record, which generally discusses mood only in relation to

³³ Id.

³⁴ Id.

³⁵ The Court agrees with Plaintiff that the appropriate inquiry is whether a mental impairment existed prior to the date last insured, not whether such an impairment was formally diagnosed prior to that date. In addition to finding no record of a formal diagnosis, the PBDD reviewer found that Plaintiff’s ability to work was not hindered by any significant mental impairment prior to the date last insured. The Court finds that this was sufficient to support the ALJ’s finding.

Plaintiff's experience of pain³⁶—there is no indication in the record that Petitioner had or has *clinical* depression. For example, in 1988, Plaintiff's doctor stated, in discussing the best treatment for her *physical* symptoms: "I do feel she would benefit best from psychological counseling if combined with the physical therapy approach."³⁷ And she was prescribed anti-anxiety medications and antidepressants for "release of muscle tension,"³⁸ and to help with "depression and sleep problems [which are] definitely contributing to her fibromyalgia pain and dysfunction."³⁹ These medications were never offered in any other context than for treatment of fibromyalgia.

Furthermore, although Plaintiff raised the issue of mental impairment in October 14, 1998, there is no evidence that Plaintiff took any measures to develop a record of such an impairment. Plaintiff never sought diagnosis or treatment for any mental health condition. In fact, Plaintiff rejected treatment with several medications commonly used to treat depression, although in Plaintiff's case, these medications were prescribed to assist in pain management, as sleeping aids, to help her manage the stress of being ill, or to improve her somatic symptoms, and there is no evidence that her doctors prescribed these medications because they suspected clinical depression. The ALJ properly considered Plaintiff's refusal to take such medications. Petitioner has also resisted her doctor's suggestions that she seek counseling to help her cope with stress caused by her illness.⁴⁰

³⁶ See, e.g., R. 415, 418.

³⁷ R. 460.

³⁸ R. 442.

³⁹ R. 418.

⁴⁰ R. 430.

The Court finds that the evidence as a whole was sufficient to support a decision on Plaintiff's claim without a consultative examination, and therefore the failure to order such an exam was not error requiring reversal or remand.

B. Assigning Proper Weight to the Opinion of the Treating Doctor

Plaintiff next argues that the ALJ improperly rejected the opinions of treating doctors without adequate explanation. The Court disagrees. While "treating physicians' reports should be accorded great weight, especially when their opinions reflect expert judgment based on a continuing observation of the patient's condition over a prolonged period of time,"⁴¹ and a treating physician's reports should be given *controlling* weight when it is well-supported and consistent with other evidence on the record,⁴² the ALJ need not credit such reports if they are unsupported by the weight of medical evidence.

The ALJ explained in detail the ways in which the functional capacity questionnaires completed by Plaintiff's doctors, which suggested that Plaintiff was disabled and unable to work prior to her date last insured due to fibromyalgia, interstitial cystitis, vulvodynia, and/or pruritis,⁴³ were inconsistent with the information contained in the medical records maintained by her treating doctors. First, Plaintiff first complained of pruritis in 2001, after her date last insured. Second, urologist Dr. Whitman's medical records indicate that Plaintiff's interstitial cystitis was intermittent, with occasional flare-ups, and was treated on an as-needed basis. The ALJ considered the actual

⁴¹ Plummer v. Apfel, 186 F.3d 422, 429 (3d Cir. 1999).

⁴² 10 C.F.R. § 416.927.

⁴³ The Court notes that Dr. Kress does not include depression as one of Plaintiff's disabling conditions.

medical reports regarding Plaintiff's treatment, number of "good days," and urinary frequency when she considered her residual functional capacity.⁴⁴ Finally, the ALJ cited Plaintiff's fibromyalgia records, which indicate a sporadic treatment history, a lack of compliance with recommended treatments, a tendency to discontinue treatments that were working (such as massage and physical therapy), and a lack of intensive treatments.⁴⁵ The ALJ also cited to records indicating normal strength, reflexes, and sensation, and a lack of neurological involvement.⁴⁶ The ALJ properly considered all of these facts when she determined that Plaintiff was not disabled by the condition prior to the date last insured. As this information was contained in the medical records of Plaintiff's treating doctors, the ALJ could properly consider these records and reject the doctors' stated conclusions about Plaintiff's disability and functional limitations, to the extent that the conclusions were inconsistent with the records.

C. Rejection of Plaintiff's Testimony

Next, Plaintiff argues that the ALJ erred in finding her testimony regarding her functional limitations was not fully credible. The ALJ explained that "her allegations are not supported by the totality of the medical evidence, including updated treatment records submitted in connection with the Court remand."⁴⁷ The ALJ then went on to detail the medical evidence which was inconsistent with Plaintiff's claims. Some of the specific facts the ALJ relied upon were

⁴⁴ R. 25.

⁴⁵ R. 25-26.

⁴⁶ R. 26.

⁴⁷ R. 23.

detailed in the section above, as they warranted rejecting the treating doctors' opinions about functional limitations as well. It appears to this Court that the ALJ fully examined the medical evidence and carefully considered Plaintiff's claims in light of that evidence. The Court thus finds that the ALJ's conclusion regarding Plaintiff's credibility was supported by substantial evidence.

D. Assessment of Plaintiff's Residual Functional Capacity

Residual functional capacity is that which a claimant is able to do, despite the cumulative limitations (exertional and non-exertional) caused by his or her impairments.⁴⁸ Turning first to exertional limitations, the ALJ found Plaintiff was capable of the full range of unskilled light work, which involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects up to 10 pounds, a good deal of walking or standing (or sitting with pushing or pulling of arm or leg controls), as of her date last insured. Plaintiff was also found able to do the full range of sedentary work.

Throughout the medical records, Plaintiff's doctors indicated that her strength was unimpaired by her fibromyalgia,⁴⁹ and that exercise could further improve her condition.⁵⁰ Furthermore, the record is replete with indications that Plaintiff was not doing all she could to treat her symptoms.⁵¹ The ALJ amply supported her findings regarding Plaintiff's exertional functional

⁴⁸ Burnett v. Commissioner of Soc. Sec. Admin., 220 F.3d 112, 121, 122 (3d Cir. 2000).

⁴⁹ See, e.g., R. 407, 408, 419, 422, 427, 445.

⁵⁰ See, e.g., R. 420, 425-426, 430, 435.

⁵¹ See, e.g., R. 403, 409.

limitations by citing to the medical records.⁵² The ALJ also justified her rejection of the functional limitations questionnaire completed by Dr. Kamen, finding it did not accurately reflect her actual functional status prior to her date last insured because it was inconsistent with the clinical record as a whole. As noted above, the Court finds no fault with the ALJ's rejection of Dr. Kamen's functional questionnaire, as the ALJ's determination was supported by substantial evidence.

E. The ALJ's Treatment of Plaintiff's Non-Exertional Impairments

Finally, Plaintiff argues that the ALJ failed to properly consider her non-exertional functional limitations. Specifically, Plaintiff states that the ALJ failed to consider her frequent need to urinate and limitations caused by her mental impairment when the ALJ found her able to engage in unskilled, light occupations. The Court disagrees, finding the ALJ did consider the record evidence regarding these functional limitations when determining whether Plaintiff was able to work.

In finding that Plaintiff's symptoms of interstitial cystitis were not frequent or severe enough to markedly affect her functional capacities, the ALJ cited Dr. Whitmore's treatment records. These records discussed occasional flare-ups, treatment with medication, stable and fairly well managed symptoms, and generally indicated that Plaintiff needed to void every two to three hours.⁵³ The ALJ found that these symptoms did not amount to a functional limitation on Plaintiff's ability to work, and the Court finds that this conclusion is supported by substantial evidence in the record.

As to Plaintiff's mental impairment, the ALJ found that Plaintiff had no more than mild functional limitations due to her alleged mental impairment, including no more than mild

⁵² R. 24-26.

⁵³ R. 24-25.

limitations in activities of daily living, and mild limitations on social functioning and concentration, persistence, and pace.⁵⁴ Plaintiff put forth no medical evidence demonstrating more than mild problems functioning in these domains, although the burden is on the claimant to establish any functional limitations. The ALJ also found that Plaintiff's somatic preoccupation with pain might render her able to perform only simple, repetitive tasks.⁵⁵ Accordingly, the ALJ found that Plaintiff was unable to perform her prior work as a teacher, a *skilled* light occupation. Although the ALJ does not specifically address the functional limitations which prevent Plaintiff from performing this work, the Court must infer that the limitations are non-exertional, since that position was also light duty and the ALJ found that Plaintiff had the physical capacity to perform light work. Therefore, it does appear that the ALJ did consider Plaintiff's non-exertional limitations, including her mild mental limitations, when arriving at her decision at step four of the sequential evaluation. The ALJ nevertheless determined that these mild limitations did not undermine Plaintiff's ability to do *unskilled* light work, and the Court finds this conclusion is supported by substantial evidence.

V. CONCLUSION

For the above stated reasons, the Court finds that the ALJ's decision was supported by substantial evidence.

An appropriate Order follows.

⁵⁴ R. 22.

⁵⁵ R. 26.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BARBARA K. HALL,	:	
Plaintiff	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 02-6918
	:	
JO ANNE BARNHART, Commissioner	:	
of Social Security,	:	
Defendant	:	

ORDER

AND NOW, this 8th day of March, 2006, upon careful, independent consideration of Plaintiff's Motion for Summary Judgment [Doc. #21], Defendant's Motion for Summary Judgment [Doc. #24], the Report and Recommendation of Magistrate Judge Peter B. Scuderi [Doc. #28], and Plaintiff's Objections thereto [Doc. #30], as well as the administrative record in its entirety, and for the reasons set forth in the attached Memorandum Opinion, it is hereby

ORDERED:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. Plaintiff's Objections are **OVERRULED**;
3. Plaintiff's Motion for Summary Judgment is **DENIED**;
4. Defendant's Motion for Summary Judgment is **GRANTED**; Judgment is entered in favor of the Defendant.
5. The Clerk of Court shall mark this case **CLOSED** for administrative purposes.

It is so **ORDERED**.

BY THE COURT:

CYNTHIA M. RUFÉ, J.